

**REMARKS/ARGUMENTS**

Reconsideration and allowance of this application are respectfully requested. Currently, claims 1, 4-25, 30, 32-33 and 39-48 are pending in this application. Claim 47 has been withdrawn. Newly added claim 48 is directed to the elected invention.

**Rejections Under 35 U.S.C. §112:**

Claims 1 and 46 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being incomplete for omitting essential steps, such omission accounting to a gap between the steps. Applicant respectfully traverses this rejection.

While Applicant disagrees with the rationale expressed in section 7 (page 3) of the Office Action, Applicant has adopted the Examiner's helpful suggestion in order to expedite allowance of the present application. In particular, section 7 (page 3) of the Office Action states "Suggestion for step (i) 'measuring a portion of the usage of the network resources by at least one of the customer service terminals' and for step (ii) comparing the measurement of the network resources in step (c) (i), with respect to the sampled usage..." For example, independent claim 1 states "(i) measuring a portion of the usage of the network resources by the at least one of the customer terminals; and (ii) comparing data corresponding to the measurement of the network resources in step (c) (i), with respect to the sampled usage..." While this recitation in claim 1 does not identically (i.e., word-for-word) match the helpful suggestion by the Examiner, Applicant believes that the Examiner's suggestion has essentially been incorporated into claim 1. Similar comments apply to independent claim 46. Applicant therefore requests that the rejection under 35 U.S.C. §112, second paragraph, be withdrawn.

Section 7 (page 3) of the Office Action alleges that claim 1 omits steps including a step which includes “each of the plurality of customer terminals usage” after step (a). Section 7 of the Office Action also alleges that another step is omitted after step (b) because there is no additional step with “calculating the network usage charge” or another step once the network usage charge is generated from the measuring data. The Office Action then alleges that “There is a disconnect between steps b) and c).” Applicant respectfully disagrees with these allegations.

First, step (b) in claim 1 specifically refers to step (a). Moreover, step (c) also specifically refers to step (a) and step (b). Accordingly, steps (a), (b) and (c) are logically connected and interrelated with each other. There is no disconnect between any of these steps.

Second, step (b) in claim 1 has been amended to recite “each of the plurality of customer terminals usage”, and thus the allegation in the Office Action that a step is missing after step (a) reciting “each of the plurality of customer terminals usage” is unfounded longer. Again, steps (a) and (b) of claim 1 are logically connected and interrelated to each other -- as evident by the common claim language “each of a [or the] plurality of customer terminals usage” required by both steps (a) and (b), and by step (b)’s clear and unambiguous reference to prior step (a). No essential steps are omitted between steps (a) and (b).

Third, there is no omitted essential step between step (b) and (c). Instead, steps (b) and (c) are logically connected and interrelated with respect to each other -- as evident by the fact that step (c) makes specific reference to step (b) [as well as step (a)]. The allegation that “another step is missing after step b) because there is not another step with

‘calculating the network usage charge’” is completely unfounded. In particular, step (c) (ii) recites “comparing data... with data corresponding to one or both of the usage of network resources measured by the at least one customer terminal in step (a) and the network usage charge calculated in step (b) (emphasis added).” Accordingly, step (b) recites “calculating a network usage charge” and then step (c) explicitly recites using “the network usage charge calculated in step (b)” by comparing it to other data in step (c) (ii). Steps (b) and (c) are thus not disconnected as alleged by the Office Action.

Moreover, as stated in *Ex parte Trummer* (Appeal No. 1997 – 1351 in U.S. Application No. 08/127,924)<sup>1</sup> “‘incompleteness’ is not a common rejection...” and “an ‘incompleteness’ rejection should be extremely rare...” As noted by the Board in this decision, “The rejection basically finds all of the disclosed structure to be essential and would require all structure... to be included in an independent claim. This rejection could be applied in almost every case since it could be said that every part of a disclosed combination is somehow essential to the overall purpose of the invention.” However, the Board warned “This would infringe an applicant’s right to claim what he regards as his invention.”

In the present application, the Office Action does not point to any evidence that Applicant regards their invention to be something other than what is claimed. The fact that independent claims 1 and 46 do not include every single feature described in the specification does not render the claim indefinite since “Breadth of a claim is not to be

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<sup>1</sup> Opinion was not written for publication in a law journal and is not binding precedent of the Board.

equated with indefiniteness.” *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971).  
[See MPEP section 2173.04].

In summary, no essential step has been omitted from the invention of claims 1 and 46. Instead, steps (a), (b) and (c) explicitly recite a cooperation therebetween. Step (b) makes specific reference to step (a) and shares common wording, thereby explicitly reciting the interrelated cooperation between these two steps. Similarly, step (c) makes specific reference to steps (a) and step (b) and utilizes common language, thereby explicitly reciting the interrelated cooperation between all of the steps.

Accordingly, Applicant respectfully requests that the rejection of claims 1 and 46 under 35 U.S.C. §112, second paragraph, be withdrawn.

Claim 10 was rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. Without acquiescing to the propriety of this rejection, Applicant has amended claim 10 in accordance with the helpful suggestion provided at the end of section 9 (page 4) of the Office Action. That is, similar to the suggestion provided in the Office Action, claim 10 now recites “wherein sampling the usage in step (c) is performed by a network operator and sampling the usage in step (c) comprises sampling only part of the traffic....” This recitation of claim 10 is thus identical to the suggestion provided by the Office Action. Applicant therefore requests that the rejection to claim 10 under 35 U.S.C. §112, second paragraph, be withdrawn.

**Allowable Subject Matter:**

None of the pending claims have been rejected in view of prior art (e.g., there is no rejection in the Office Action under 35 U.S.C. §102 or §103). As noted above, all of

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the pending claims are in full conformance with 35 U.S.C. §112. Applicant therefore respectfully submits that all of the pending claims are allowable.

Section 10 of the Office Action provides "Suggestions for some subject matter that might be incorporated into the independent claim limitations as follows...."

Applicant has added new independent claim 48. While claim 48 does not explicitly (i.e., word-for-word) recite the suggestion provided in section 10 (page 4) of the Office Action, Applicant believes that claim 48 corresponds at least generally to the helpful suggestion provided in section 10 of the Office Action. However, Applicant respectfully requests that the Examiner make her own decision regarding this issue. Applicant submits that claim 48 is allowable.

**Conclusion:**

Applicant believes that this entire application is in condition for allowance and respectfully requests a notice to this effect. If the Examiner has any questions or believes that an interview would further prosecution of this application, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

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